

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Case No.: 3:21-cv-00123-ART-CSD

ROBERT LONNELL SMITH, JR.,

Plaintiff

V.

COUNTY OF WASHOE, et al.,

Defendants

Order

Re: ECF No. 37

Before the court is a declaration filed by Plaintiff where he asks the court to stay ruling on Defendants' pending dispositive motions until discovery is completed. (ECF No. 37.) Defendants filed a response. (ECF No. 38.)

Plaintiff is an inmate in the custody of the Washoe County Detention Facility (WCDF), who filed this pro se action pursuant to 42 U.S.C. § 1983. The court screened his amended complaint and allowed him to proceed with the following claims: (1) an unconstitutional conditions of confinement claim based on inadequate exercise against defendants German, Barrett-Venn, Rice, Washoe County and Balaam; (2) a First Amendment claim against Johnson and Garza related to alleged censorship of the Jailhouse Lawyers Handbook; and (3) a First Amendment claim against Washoe County and Balaam regarding WCDF's postcard only mail policy. (ECF Nos. 8, 9.)

A scheduling order was entered on May 19, 2022, setting, among other things, a discovery completion deadline of November 15, 2022, and a dispositive motions deadline of December 15, 2022. (ECF No. 28.)

1 On June 21, 2022, defendant Sheriff Balaam filed a motion for judgment on the pleadings
2 arguing that the postcard policy claim being asserted against Sheriff Balaam and Washoe County
3 is duplicative in that an official capacity suit against Sheriff Balaam is the equivalent of a suit
4 against Washoe County. (ECF No. 33.)

5 On July 18, 2022, defendants German, Barrett-Venn, Rice, Balaam, and Washoe County
6 moved for partial summary judgment based on qualified immunity as to the unconstitutional
7 conditions of confinement claim related to exercise. They argue that it was not clearly
8 established that providing Plaintiff with two hours outside of his cell each day of the week
9 violated the constitution.

10 Plaintiff seeks a stay of his obligation to respond to these motions until discovery is
11 completed, noting that he served discovery on Defendants on July 18, 2022. Plaintiff asserts that
12 discovery will result in finding evidence to prove his complaint; that Balaam is not entitled to
13 immunity in his official capacity; that Defendants' motions are premature; that Defendants
14 violated clearly established constitutional rights; that his medical diagnosis of
15 COPD/emphysema was caused by Defendants; Defendants are aware of the risks of their actions
16 and ignored those risks; and Defendants actions served no penological interest. (ECF No. 37.)

17 Under Federal Rule of Civil Procedure 56(d), if the nonmoving party shows by affidavit
18 or declaration that he cannot present facts to oppose a motion for summary judgment, the court
19 may defer considering the motion to deny the motion, or allow time to conduct discovery, or
20 issue any other appropriate order. Fed. R. Civ. P. 56(d).

21 "Rule 56(d) provides a 'device for litigants to avoid summary judgment when they have
22 not had sufficient time to develop affirmative evidence.'" *Stevens v. Corelogic, Inc.*, 899 F.3d
23 666, 678 (9th Cir. 2018) (quoting *United States v. Kitsap Physicians Serv.*, 314 F.3d 995, 1000

1 (9th Cir. 2002)). "A party seeking additional discovery under Rule 56(d) must explain what
2 further discovery would reveal that is essential to justify [its] opposition to the motion[] for
3 summary judgment." *Id.* (citation and quotation marks omitted). The affidavit or declaration
4 must set forth the *specific* facts the party hopes to elicit from further discovery; that the facts
5 exist; and how they are essential to oppose the motion. *Id.* (citation omitted).

6 Plaintiff's declaration does not adequately describe what facts he hopes to elicit in
7 discovery and how these facts are essential to oppose Defendants' motions. Nevertheless,
8 because the motions are dispositive, Plaintiff is pro se, and discovery is still in the early stages,
9 the court will grant Plaintiff's request insofar as it will extend the deadline for Plaintiff to file his
10 response to Defendants' motion by two weeks beyond the August 22, 2022 deadline for
11 Defendants to serve their responses to Plaintiff's discovery.

12 CONCLUSION

13 Plaintiff's motion (ECF No. 37) is **GRANTED IN PART** insofar as Plaintiff has up to
14 and including **September 6, 2022**, to file his responses to Sheriff Balaam's motion for judgment
15 on the pleadings and Defendants' motion for partial summary judgment. Defendants' reply briefs
16 are due on or before **September 13, 2022**.

17
18 **IT IS SO ORDERED.**

19 Dated: August 5, 2022

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22 _____
23 Craig S. Denney
United States Magistrate Judge